

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: Ross McCaw, d.b.a. McCaw Pumping Co. Iowa County, Iowa	ADMINISTRATIVE CONSENT ORDER NO 2007-AFO-20
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TO: Ross McCaw  
803 Howard Ave.  
Marengo, IA 52301

**I. SUMMARY**

This Administrative Consent Order (Order) is entered into between Ross McCaw, d.b.a. McCaw Pumping Co. (Mr. McCaw) and the Iowa Department of Natural Resources (DNR). Mr. McCaw hereby agrees to cease all illegal discharges to waters of the State, to pay fish restitution and to pay a penalty. In the interest of avoiding litigation, the parties have agreed to the following provisions.

**Relating to technical requirements:**

Chad Kehrli  
Iowa Department of Natural Resources  
2300 15<sup>th</sup> Street  
Mason City, Iowa 50401  
Phone: 641/424-4073

**Relating to legal requirements:**

Carrie Schoenebaum, Attorney  
Iowa Department of Natural Resources  
Wallace State Office Building  
Des Moines, Iowa 50309  
Phone: 515/281-0824

**Payment of penalty to:**

Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This Order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties. This Order is also issued pursuant to Iowa Code section 481A.151 and 571 IAC 113.5 which authorize the DNR to require restitution for destruction of wild animals.

**III. STATEMENT OF FACTS**

The DNR and Mr. McCaw hereby agree to the following statement of facts:

1. Mr. McCaw is a certified commercial manure applicator, his certification number is 7055CMSR. Mr. McCaw contracts with livestock feeding facilities to dispose of

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animal waste. Mr. McCaw was retained by Jeff Krominga, the owner and operator of Prairieview Hog Farm Inc., to land apply manure from his swine confinement operation located at Section 30 T83 R11W, (Union Township), Benton County Iowa. This property is locally known as 1625 73 Street Keystone, Iowa.

2. On October 20, 2006, Mr. McCaw reported that liquid swine manure was spilled into Prairie Creek while he was pumping manure from Prairie View Hog Farm Inc. (hog farm). He reported that an umbilical hose was used to transport manure from the hog farm to a nearby field. This hose was placed through the creek with a connection located approximately 50 feet from the creek. As he began to pump the manure, a hose coupling failed. Mr. McCaw estimated that approximately 1500 gallons of manure was discharged.

3. On October 20, 2006, Chad Kehrli an Environmental Specialist of the DNR, investigated the spill. During this investigation, he took three field samples of water from Prairie Creek.<sup>1</sup> At the site of field sample 2, Mr. Kehrli observed the following: dead fish downstream of the manure discharge, the water was grey in color, it contained high levels of suspended solids and the bottom of the creek was not visible.

Next, Mr. Kehrli went to the location of field sample 3, which is down gradient of the spill area. At this location he observed the following: dead fish in the creek, the water was grey in color, it contained high levels of suspended solids and the bottom of the creek was not visible.

Last, Mr. Kehrli went up gradient of the manure spill, to the location of field sample 1. At this location, Mr. Kehrli did not see any dead or live fish, the water did not have a high level of suspended solids and he could see the bottom of the creek.

4. On November 1, 2006, Mr. Kehrli opened field sample 2, a manure odor was detected. This field sample was submitted to the University of Iowa Hygienic Laboratories (UHL) for testing, the results are as follows:

Ammonia Nitrogen as N: Concentration 8.3 mg/L (Quantitation Limit 0.05 mg/L)  
Chemical Oxygen Demand: Concentration 530 mg/L (Quantitation Limit 10 mg/L)

On November 1, 2006, field sample 3 was opened, a manure odor was detected. This sample was sent to UHL for testing, the results are as follows:

Ammonia Nitrogen as N: Concentration 40 mg/L (Quantitation Limit 0.05 mg/L)  
Chemical Oxygen Demand: Concentration 690 mg/L (Quantitation Limit 10 mg/L)

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<sup>1</sup> The exact location of each field sample and its proximity to the confluence are demarcated on the attached map.

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On November 1, 2006, field sample 1 was opened, a manure odor was not detected. This field sample was submitted to the University of Iowa Hygienic Laboratories (UHL) for testing, the results are as follows:

Ammonia Nitrogen as N: Concentration <0.05 mg/L (Quantitation Limit 0.05 mg/L)  
Chemical Oxygen Demand: Concentration 16 mg/L (Quantitation Limit 10 mg/L)

5. On October 21, 22 and 23, 2006, Paul Sleeper, a Natural Resource Biologist of the DNR, investigated the fish kill caused by the manure spill. Mr. Sleeper concluded that 22,809 fish were killed, valued at \$8,484.01 (plus investigation costs of \$639.06).

**IV. CONCLUSIONS OF LAW**

The DNR and Mr. McCaw hereby agree to the following conclusions of law:

1. Iowa Code section 455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into waters of the State, except for adequately treated pollutants discharged pursuant to a permit from the DNR. Since no such permit has been issued for this manure release, the foregoing facts establish that this provision has been violated.
2. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor, or other aesthetically objectionable conditions; discharges that settle to form sludge deposits; discharges that interfere with livestock watering; or discharges that are toxic to animal or plant life. The foregoing facts establish that one or more of these criteria have been violated.
3. Iowa Code subsection 459.311(2) and 567 IAC 65.2(7) require that all manure removed from an animal feeding operation or its manure control facility be land applied in a manner which will not cause surface or groundwater pollution. Pursuant to 567 IAC 65.19(8)"b", commercial manure applicators are required to comply with these and all other minimum manure control requirements. The foregoing facts establish that these provisions were violated.
4. Iowa Code subsection 481A.151(1) provides a person who is liable for polluting a water of the State in violation of state law be liable to pay restitution to the DNR for injury to a wild animal by the pollution. The amount of the restitution shall also include the DNR's administrative costs for investigating the incident.

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**V. ORDER**

THEREFORE, the DNR hereby orders and Mr. McCaw consents to do the following:

1. Cease and prevent the discharge of pollutants to waters of the State, except as authorized by a permit;
2. Pay an administrative penalty of \$7,500.00 to the DNR in accordance with the following schedule:
  - \$500.00 due on July 20, 2007;
  - \$500.00 due on August 20, 2007;
  - \$500.00 due on September 20, 2007;
  - \$1,000.00 due on October 20, 2007;
  - \$2,000.00 due on November 20, 2007; and
  - \$3,000.00 due on December 20, 2007.
3. If any of the said payments are not received in accordance with the scheduled dates, the remainder of the penalty shall be due immediately. Failure to pay the penalty in full may result in referral to the Iowa Attorney General's Office or to the Iowa Department of Revenue and Finance.
4. Pay fish restitution of \$9,123.07 within 30 days of the date the Director signs this Order.

**VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day for each violation of water pollution control laws; more severe criminal sanctions are also provided.

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$7,500.00 is assessed. The penalty shall be paid pursuant to the schedule set forth above. The administrative penalty is determined as follows:

- a. Economic Benefit. Mr. McCaw saved time and money by placing a hose connection only 50 feet from Prairie Creek. Therefore, \$500.00 is assessed for this factor.
- b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time as the most equitable and efficient means of resolving the matter. Actual harm to the environment was documented by water quality analysis, and by visual observation of impact to Prairie Creek including dead fish. In addition, Iowa

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law was violated: unauthorized discharge to waters of the State, and violation of water quality standards. For these reasons, \$5,000.00 is assessed for this factor.


c. **Culpability.** Mr. McCaw placed the hose connection 50 feet from Prairie Creek. Had he placed the hose connection farther from Prairie Creek it is likely impacts to waters of the State would have been minimized. Therefore, \$2,000.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

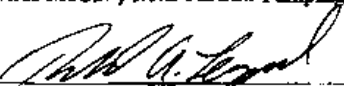
Iowa Code section 455B.175(1) and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Environmental Protection Commission. Iowa Code section 481A.151 authorizes a written notice of appeal to the Natural Resource Commission. This Order is entered into knowingly by and with the consent of Mr. McCaw. By signature to this Order, all rights to appeal this Order are waived by Mr. McCaw.

**VIII. NONCOMPLIANCE**

Failure to comply with this Order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with provision "V. Order" of this Order constitutes full satisfaction of all requirements pertaining to the violations described in Division IV of this Order. The DNR reserves the right to bring enforcement action or to request that the Attorney General initiate legal action to address other violations not described in this Order but which may arise from the facts summarized in Division III of this Order.

  
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Ross McCaw, d.b.a. McCaw Pumping Co.

Dated this 7 day of June 2007

  
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Richard A. Leopold, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 25 day of June 2007